

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
Rules and Regulations Implementing the )  
Telephone Consumer Protection Act of 1991 )  
 ) CG Docket No. 02-278  
Petition for Declaratory Ruling of )  
All About the Message, LLC )

**COMMENTS OF ROBERT H. BRAVER  
IN RESPONSE TO ALL ABOUT THE MESSAGE, LLC'S  
PETITION FOR DECLARATORY RULING OR WAIVER**

**INTRODUCTION**

I am writing today in response to the Commission's request for comments on All About the Message, LLC's ("AATM") Petition for Declaratory Ruling or, in the alternate, a waiver, regarding messages delivered "directly to a voicemail box" of cellular telephone subscribers. These are calls that are presumably automatically dialed and/or consist of a prerecorded message and are made without the prior consent of the called party, and could therefore be construed as unlawful under the plain language of the TCPA.

In the limited time I have had to review other responses, it appears that there is an overwhelming number of comments from consumers pointing out the obvious negative implications if companies such as AATM and Stratics can successfully exploit a loophole in the TCPA, effectively declaring "open season" on everyone's cell phone voice mail boxes for any and all kinds of unsolicited communications. I will simply concur generally with these comments.

It is technically possible to deliver messages directly to voicemail in a way that does not involve initiating calls over the PSTN (e.g., direct data access to voicemail systems by agreement with and active cooperation of the various cellular service providers<sup>1</sup>), and I would concede that such methods could very well fall outside the scope of the TCPA. However, AATM's petition provides no information that would allow the Commission to even begin the consideration of a declaratory order or waiver. Indeed, the available information indicates that AATM's technology involves initiating calls in violation of the plain language of the TCPA.

**AATM'S VAGUE DESCRIPTION OF THE UNDERLYING  
"PROPRIETARY" TECHNOLOGY IS TROUBLING**

AATM appears to be a vendor making use of Stratics Networks, Inc's (Stratics) "proprietary" methods for leaving messages in cellular subscribers' voice mail boxes without first ringing a subscriber's phone. In support of its petition, Chris Blaylock, a partner in AATM, has provided a sworn declaration that does little

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<sup>1</sup> While technically possible, it is inconceivable to me that the cellular service providers would allow wholesale direct access to their customers' voicemail boxes.

more than parrot vague information and self-serving opinions provided by or for Stratics. Further, Mr. Blaylock's declaration provides no relevant admissible evidence based on his personal knowledge, and would likely be stricken if proffered for the same purpose in a legal proceeding.

If Stratics were, in fact, completely bypassing the PSTN and interfacing directly with the cellular service providers' voice mail systems, I believe they would have been very clear about this. In addition to this glaring omission, other nuggets on the Stratics web site and in Mr. Blaylock's declaration indicate that Stratics is in fact delivering their "ringless" voice mail messages by initiating automatically dialed and/or prerecorded message calls over the PSTN.

What we do know about Stratics' methods, taken directly from the Stratics web site and the exhibits attached to the AATM petition, is that in providing their "Ringless Voicemail Drops" service, Stratics utilizes "80,000 *phone* lines" (Petition Exhibit "D", page 45 of petition PDF, emphasis added), and a "*Landline* to *landline* session... to drop the message." (Braver Exhibit "A", emphasis added).

Clearly, AATM, via Stratics, is in fact using the PSTN to initiate individual calls to "drop" voice mail messages. Because of AATM and Stratics' vague description of their "proprietary" methods, I can only make an educated guess as to their methodology.

Most of us have experienced the phenomenon whereby we are on a cell-to-cell call, and the call is dropped. Both parties attempt to reestablish the conversation by calling each other, and each party receives the other party's voice mail. Neither party's phone rings nor do they receive a "call waiting" tone – the calls go straight to voice mail. This is because while a call to or from a cell phone is in the set-up process, another call cannot ring through, and there is no established call with which to deliver a call waiting notification. Therefore, the only available path to send the call is to the called party's voice mail.

It is no secret that at least some forms of direct-to-voicemail telemarketing exploits this behavior by initiating two calls to the target cell number in rapid succession via digital PSTN service, e.g., ISDN PRI service. The first call (set up via the PRI circuit's D channel) is dropped very quickly, presumably before the cellular provider can complete the connection to the called party's cell phone, and without establishing a voice path on a B channel. The second call, initiated milliseconds behind this first "dummy" call, ends up being connected directly to the called party's voice mail box. This is completely consistent with the slippery descriptions provided by AATM and Stratics.

Another possibility, as suggested by another commenter, would be to utilize the "back door" number provided by cell providers so that subscribers can call in to the voice mail system from any phone. Presumably, these access numbers permit a caller to use DTMF signaling to specify a subscriber's number and directly leave a voice mail message that way. But even in this case, AATM via Stratics would still be initiating a PSTN call to a telephone number assigned to a cellular service provider.

**AUTOMATICALLY DIALED AND/OR PRERECORDED MESSAGE CALLS INITIATED TO  
CELL PHONE NUMBERS ARE SUBJECT TO TCPA RULES**

AATM, Stratics, and attorney Eric Allen misstate the clear and unambiguous language in the TCPA that generally prohibits automatically dialed and/or prerecorded message calls to telephone numbers assigned to a cellular service provider. In addition to the enumerated categories of telephone numbers to which such calls are generally prohibited, the statute also prohibits calls to any service for which the called party is

charged for the call. 47 USC § 227(b)(1)(a)(iii). AATM, Stratics, and Mr. Allen seize on the catch-all additional category of services for which the called party is charged, and conveniently interpret this to mean that calls to the enumerated categories of telephone numbers are restricted only if the called party is charged for the call. This self-serving interpretation is contrary to the plain language of the statute.

Ironically, while many American cell subscribers have unlimited voice plans, most cell providers' voice mail will hold a rather limited number of messages unless an enhanced voice mail service is subscribed to at an additional cost.

**THE COMMISSION HAS INSUFFICIENT FACTS TO MAKE A DECLARATORY RULING OR  
ISSUE A WAIVER**

As set forth above, AATM has not provided sufficient information on Stratics' "proprietary" methods for the Commission to issue a declaratory order or waiver. For that matter, other than stating the obvious that widespread use of the technology in question would be disastrous, commenters such as myself do not have sufficient information to intelligently comment on AATM's arguments in the context of the TCPA and the Commission's delegated rulemaking authority. All I could do here is make an educated guess as to what is going on "under the hood" with Stratics' technology, and make the case that my guess is probably correct.

If AATM via Stratics is truly delivering voice mail messages without initiating calls over the PSTN to telephone numbers assigned to a cellular telephone service, then they have nothing to worry about and have no reason to petition the Commission for a declaratory order or waiver. Should AATM, Stratics, or any other Stratics customer find themselves defending a TCPA suit based on the Ringless Voice Mail service, that court would be the proper venue for determining whether or not the calls fall under the TCPA. In such a case, discovery would presumably be conducted to unmask Stratics' mysterious "proprietary" technology, perhaps under protective order. Such a case would be a pure question of law and ripe for quick summary adjudication. A well-reasoned court opinion would go a long way to settling the matter.

For these reasons, I strongly urge the Commission to deny the relief requested in AATM's Petition.

I thank the Commission for the opportunity to comment on this matter.

Respectfully submitted,

s/Robert Braver

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## BRAVER EXHIBIT “A”

